

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE**  
**AT KNOXVILLE**

**M.B., et al.,**

**Plaintiff,**

**v.**

**GOVERNOR BILL LEE, et al.**

**Defendant.**

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**No. 3:21-CV-317**

**DECLARATION OF JASON MYERS**

1. I, JASON MYERS, pursuant to 28 U.S.C.A. § 1746, after first being duly sworn according to law, declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information and belief:
2. I serve as the Executive Director of Student Supports for the Knox County School system ("KCS"). KCS is the Local Education Agency ("LEA") for Knox County, Tennessee, and is managed and controlled by the Knox County Board of Education ("KCBOE").
3. In that role I supervise special education services and health services for KCS students across all of the approximately 90 schools in the KCS system. I also oversee services and supports for students with 504 plans.
4. Last year, KCBOE implemented a mask policy for the school year. [Exhibit 1].
5. The mask mandate policy previously implemented by KCBOE stated that face coverings must be worn by students, employees, and visitors with the following exceptions:
  - a. Students, employees, and visitors may remove masks or face coverings for eating and drinking;
  - b. Students, employees, and visitors may be exempted from this policy by the school principal due to a documented medical condition; and students with health,

- behavioral, or other disability concerns, as noted in his or her IEP or 504 plan(s), will be addressed on an individual basis and afforded all protections and safeguards under federal and state law;
- c. Students, employees, and visitors may remove masks or face coverings on a case-by-case basis for specific instructional needs and other activities (such as, when 6 feet distancing can be maintained, outdoor recess and/or other appropriately distanced activities), as determined by the principal in consultation with the teacher, and permission will not be unreasonably withheld, in which case the teacher will utilize appropriate social distancing measures; and
  - d. Students, employees, and visitors may be exempted from this policy due to special behavioral or individualized needs as determined by the school principal.
6. The Court's limited exemptions (autism and tracheotomy) exclude many students who were exempted under last year's mask mandate policy for various other medical/behavioral or mental health conditions. Examples include hearing and speech disorders, developmental delays, Downs Syndrome, asthma, dermatological issues, behavioral issues, and heart conditions.
7. For example, students with disabilities often start pre-school at age three. Many of these students are experiencing significant developmental delays that mean their level of functionality is often much younger than three years of age. KCS school teams were able to institute masking in these classrooms as a learning process to allow these students to develop the ability to wear a mask, and under the Court's order, these students will be sent home when they are not able to comply with a mask mandate.
8. A list of medical conditions to be exempted is simply not a workable system and will result in a list of exemptions that are both under- and over-inclusive.
9. For example, there are 932 students with autism attending KCS, but many of them do not experience sensory issues significant enough to prevent them from wearing a mask.

However, all 932 of these students are currently exempt from a mask mandate under the court's order.

10. A determination of whether a student must be exempted from wearing a mask should be made on an individualized basis. Otherwise, KCS staff will be operating on assumptions about students with disabilities rather than facts.
11. KCS staff are already receiving dozens of calls, emails, and correspondence from parents and staff regarding which "medical conditions" to list as exempt from masks. Inevitably, KCS/KCBOE will not be able to list all the possible scenarios and will be forced to continually update the list provided to the Court for approval.
12. If KCS implements the order as written, it will be faced with violating either the Order or students' (and perhaps employees') rights under the ADA and Section 504 by denying them a reasonable accommodation KCS provided last year.
13. KCS has already received requests for 504 meetings for students who last year were provided the reasonable accommodation of not wearing a mask. At this time, KCS will be forced to tell those parents that KCS is unable to provide those students with their reasonable accommodation due to the Court's order.
14. Apart from those individuals who already had plans in place to exempt them from mask-wearing, there will be those who should be exempted due to any number of conditions or circumstances but do not yet have plans in place. It will take significant time to develop these plans for all these individuals.

15. Giving KCS staff members the freedom to grant such exemptions in the manner it did last year would allow them to comply with federal disability and Special Education law, while also following the Court's directives.

Executed on the \_\_\_\_ day of September, 2021.



A handwritten signature in black ink, appearing to read 'Jason Myers', is written over a horizontal line. The signature is stylized with a large loop on the left and several smaller loops and strokes extending to the right.

JASON MYERS

Section:  <b>General School Administration</b>	<b>Knox County Board of Education Policy</b>		
	Descriptor Term:  <b>Face Coverings</b>	Descriptor Code:	Issued:
		<b>C-240</b>	<b>8/20</b>
		Reviewed: <b>4/21</b>	Revised: <b>5/21</b>

The Knox County Board of Education is mindful of the evolving need for emergency measures to respond to the COVID-19 pandemic. In consideration of the recommendations issued by the Centers for Disease Control and Prevention, the Tennessee Department of Health and the Knox County Department of Health, the Board is adopting an emergency policy for all students, employees, and visitors of Knox County Schools.<sup>1</sup>

Face coverings are essential in preventing/reducing the spread of COVID-19. Face coverings are to be worn by staff, students, and visitors, with the exceptions listed below, while inside school buildings.

Until further action of the Board, or at the discretion of the Superintendent to open in green mode under the COVID re-opening plan, all students in kindergarten through the 12<sup>th</sup> grade, employees and visitors, shall be required to wear a mask or face covering (a) while attending school or a school function in any school building, and (b) when riding school-provided transportation. All masks and face coverings must cover the nose and mouth of the student, employee, and visitor.

Students, employees, and visitors shall wear masks or face coverings at all times except for the following:

1. Students, employees, and visitors may remove masks or face coverings for eating and drinking;
2. Students, employees, and visitors may be exempted from this policy by the school principal due to a documented medical condition; and students with health, behavioral, or other disability concerns, as noted in his or her IEP or 504 plan(s), will be addressed on an individual basis and afforded all protections and safeguards under federal and state law;
3. Students, employees, and visitors may remove masks or face coverings on a case-by-case basis for specific instructional needs and other activities (such as, when 6 feet distancing can be maintained, outdoor recess and/or other appropriately distanced activities), as determined by the principal in consultation with the teacher, and permission will not be unreasonably withheld, in which case the teacher will utilize appropriate social distancing measures; and
4. Students, employees, and visitors may be exempted from this policy due to special behavioral or individualized needs as determined by the school principal.

It is the intent and directive of the Knox County Board of Education to teach and reinforce use of masks or face coverings as long as schools remain open in yellow or red modes during the threat of COVID-19. Incentive based approaches to correcting behavior is encouraged and preferred.

In the absence of an exception, students who **refuse** to wear a mask or face covering inside a Knox County School facility shall have the following consequences:

- (1) Verbal Warning

- (2) 2<sup>nd</sup> offense verbal warning
- (3) Quarantine from general population
- (4) Parent pick up

In the absence of an exception, employees who **refuse** to wear a mask or face covering inside a Knox County School Facility:

- Shall be subject to Board Policies in general, including but not limited to, B-230 and G-130.

Visitors shall wear face coverings at all times. Those who refuse may be removed from the building.

This policy will sunset on May 26, 2021.

Legal Reference:

1. Tennessee Governor Bill Lee Executive Order 55 (July 31, 2020), subject to subsequent Executive Orders, including but not limited to, Executive Order 77 (February 26, 2021).

Cross Reference:

Knox County Board of Education Policies J-190 and J-191.

Approved as to Legal Form 4/8/2021  
By Knox County Law Department  
/Gary T. Dupler/Deputy Law Director